

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Robert Bryan	Team: Squad #13	CCRB Case #: 202003255	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 05/03/2020 5:15 PM	Location of Incident: § 87(2)(b)	Precinct: 43	18 Mo. SOL 11/3/2021	EO SOL 5/4/2022	
Date/Time CV Reported Sun, 05/03/2020 7:09 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 05/13/2020 11:17 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Freddy Difo	08770	957544	PSA 8
2. POM William Corchado	13567	957487	PSA 8
3. POF Tiffany Cannon	08651	962776	PSA 8

Officer(s)	Allegation	Investigator Recommendation
A.POM Freddy Difo	Abuse: Police Officer Freddy Difo searched § 87(2)(b)	§ 87(2)(b)
B.POM Freddy Difo	Discourtesy: Police Officer Freddy Difo spoke discourteously to § 87(2)(b)	§ 87(2)(b)
§ 87(4-b) § 87(2)(g)	§ 87(4-b) § 87(2)(g)	§ 87(2)(b)
§ 87(4-b) § 87(2)(g)	§ 87(4-b) § 87(2)(g)	§ 87(2)(b)
§ 87(4-b) § 87(2)(g)	§ 87(4-b) § 87(2)(g)	§ 87(2)(b)

Case Summary

On May 3, 2020, § 87(2)(b) called IAB and filed this complaint, which was received by the CCRB on May 13, 2020.

At approximately 5:15 p.m. on May 3, 2020, § 87(2)(b) was smoking marijuana in front of his apartment building, located at § 87(2)(b) in the Bronx, when Police Officer Freddy Difo of PSA 8 approached and stopped him. PO Difo was accompanied by Police Officer William Corchado and Police Officer Tiffany Cannon, both of PSA 8. PO Difo searched inside § 87(2)(b)'s pockets (**Allegation A – Abuse of Authority; § 87(2)(g)**) and told § 87(2)(b) a bystander, to “shut the fuck up” (**Allegation B – Discourtesy; § 87(2)(g)**). § 87(2)(g)

PO Difo wrote § 87(2)(b) a summons for § 87(2)(b) (**Board Review 01**). [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

A cell phone video of the incident provided by § 87(2)(b) is attached to IA #13 (**Board Review 02**) and summarized in IA #20 (**Board Review 03**). BWC footage from PO Difo, PO Corchado, and PO Cannon was received from NYPD Legal. The footage is in IAs # 44-46 (**Board Review 04-06**) and summarized in IAs #47-49 (**Board Review 07-09**).

Findings and Recommendations

Allegation (A) Search: Police Officer Freddy Difo searched § 87(2)(b)

A cell phone video taken by an unidentified individual and provided to the investigation by § 87(2)(b) begins with PO Difo having already begun his search of § 87(2)(b) while standing in the courtyard of the Bronx River Houses. § 87(2)(b) stands approximately 10 feet away, facing the camera with his hands raised (**Board Review 02**). At 00:10, PO Difo takes an unidentified item out of § 87(2)(b)'s left pocket and places it on a nearby ledge. At 00:22, PO Difo puts his hands inside the front of § 87(2)(b)'s waistband. At 00:20, § 87(2)(b) says, “I’m not collecting no attention. I’m chilling, bro.” PO Difo says, “I was going to leave you alone, but since you want to start running your mouth...” At 00:26, § 87(2)(b) says, “I don’t care, bro. You can search me. I don’t got nothing on me. I got weed. Whatever you want to do, that’s your choice.” At 00:36, PO Difo places both his hands in § 87(2)(b)'s right pants pocket. At 00:42, PO Difo pats down the front of § 87(2)(b)'s pants and reaches around him to pat down his buttocks area. At 00:47, PO Difo stands behind § 87(2)(b) and appears to continue to pat down § 87(2)(b)'s buttocks over his pants, though PO Difo’s hands cannot be seen. At 00:53, PO Difo places several of the fingers of his right hand under § 87(2)(b)'s waistband and § 87(2)(b) says, “What are you doing? You’re not even supposed to do all that. I just said I don’t got none of that. You all in my ass, bro. You bugging out.” At 00:56, PO Difo stops searching § 87(2)(b) points to a bench, and says, “Sit.” The camera pans down to the bench before § 87(2)(b) sits down and the video ends at 01:04.

The BWC footage of PO Difo, PO Corchado, does not begin until after this portion of the incident and only captures PO Difo writing § 87(2)(b) a summons as § 87(2)(b) sits on the same bench PO Difo pointed to at the end of the aforementioned cell phone video (**Board Review 04-06**).

§ 87(2)(b)'s statement was generally consistent with the cell phone footage (**Board Review 10**). He stated that he was sitting on a bench in front of his building smoking a marijuana cigarette when he saw PO Difo, PO Corchado, and PO Cannon approach him on foot. PO Difo said, § 87(2)(b)

§ 87(2)(b) you're staying out of trouble today?" PO Difo knew § 87(2)(b)'s full name from previous encounters in the neighborhood. § 87(2)(b) replied, "Officer, I got weed on me today. I'm not in the mood for all the back and forth right now. It's a beautiful day. I want to enjoy my day. If you're going to write me a ticket, write me a ticket, because I know I'm wrong." PO Difo recovered two clear baggies during the search, one in § 87(2)(b)'s left sweatpants pocket and one in his right, each containing an eighth of an ounce of marijuana.

PO Difo stated that he, PO Corchado, and PO Cannon were performing a routine patrol in the Bronx River Houses when he noticed § 87(2)(b) holding a lit marijuana cigarette (**Board Review 11**). PO Difo approached § 87(2)(b) took the marijuana cigarette from his hand, and frisked him over his jacket and pants while looking for a firearm or other weapon. Besides his memory of a prior arrest on § 87(2)(b), during which PO Difo found a gun in one of § 87(2)(b)'s pants pockets, PO Difo had no reason to believe § 87(2)(b) was carrying a weapon. Initially, PO Difo stated that he did not recall placing his hands inside of § 87(2)(b)'s pockets. After being shown the cell phone footage, he stated that the video refreshed his memory and that he did place his hands inside of § 87(2)(b)'s pockets to recover marijuana. Aside from § 87(2)(b) holding the marijuana cigarette upon the officers' approach, PO Difo had no reason to believe § 87(2)(b) possessed any more marijuana on his person prior to the search. PO Difo found marijuana in § 87(2)(b)'s pocket, but he did not recall how much or in which pocket. He believed he had discretion in deciding whether to bring § 87(2)(b) back to the stationhouse to issue the summons there, because marijuana was illegal at the time of the incident and because § 87(2)(b) did not have ID on his person, so he could have been brought back to the stationhouse for identification purposes. PO Difo issued the summons at the incident location instead "in lieu of arrest." PO Difo said he remembered § 87(2)(b)'s first and last name from their prior interaction and that he was able to confirm § 87(2)(b)'s date of birth for the summons by looking him up on his NYPD-issued cell phone.

A search is not incident to arrest for Fourth Amendment purposes if it is only incident to probable cause that might have led to an arrest but did not. People v Reid, 24 N.Y.3d 615 (**Board Review 12**). "An officer's mere unscientific guess as to a person's propensity to commit crimes, without some objective indicia that a crime has taken, will take, or may be taking place, is simply insufficient to justify isolating that person from a group of people and making inquiry as to his conduct. People v. Boulware, 130 A.D.2d 370 (**Board Review 13**).

NYPD Patrol Guide, Procedure 209-09 states that when issuing a summons returnable to criminal court, officers may remove the violator to the stationhouse for investigation if doubt concerning the person's identity exists (**Board Review 20**).

The NYPD Legal Bureau Bulletin that went into effect in August of 2019 and was enforced until the legalization of marijuana in March of 2021 states that "Possession of small amounts of marihuana, up to and including 2 ounces, will be a violation" and that "smoking marihuana or possessing marihuana open to public view will be downgraded from a misdemeanor to a violation" (**Board Review 21**).

PO Difo's stated reasons for searching § 87(2)(b) were twofold: PO Difo had previously found a gun in § 87(2)(b)'s possession and § 87(2)(b) could have been arrested for marijuana possession, so the search was performed incident to this hypothetical arrest. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(g)

§ 87(2)(g)

Allegation (B) Discourtesy: Police Officer Freddy Difo spoke discourteously to § 87(2)(b)

§ 87(2)(b)

In PO Corchado's BWC footage, at the 05:10 minute-mark of the media player timestamp (visible at the bottom of screen), as PO Difo is writing § 87(2)(b) the summons, an unidentified onlooker standing approximately 50 feet away from the officers (later identified by PO Difo during his interview as § 87(2)(b) says, "It's like the hundredth time they stopped you. It's some bullshit. These two. No other cops. Literally these two" (**Board Review 05**). At 05:15, PO Difo replies, "Will you shut the fuck up and walk away?" PO Difo continues to write the summons and § 87(2)(b) says, "I can talk all I want to. You can't say nothing to me. I can talk all I want. I know my rights." He tells PO Difo he studied government justice in school, and in response, at 05:35, PO Difo repeatedly asks § 87(2)(b) "Do you want a cake?" At no point does § 87(2)(b) approach the officers or impede PO Difo's ability to issue the summons.

§ 87(2)(b) stated that while PO Difo wrote § 87(2)(b)'s summons for § 87(2)(b), he argued with bystanders whom § 87(2)(b) did not know. PO Difo used profanity toward someone in the crowd, though § 87(2)(b) could not recall exactly what he said.

§ 87(2)(b) was unavailable to the investigation (see IAs for contact attempts).

PO Difo stated that while he was writing § 87(2)(b)'s summons, § 87(2)(b) started cursing at the officers. PO Difo yelled at him, "Shut the fuck up. Walk away." § 87(2)(b) said, "Just give me the summons so I can leave." PO Difo told § 87(2)(b) "You're right. I apologize to you."

Officers must respect the dignity of each individual and render their services with courtesy and civility. NYPD Patrol Guide, Procedure 200-02 (**Board Review 14**). NYPD's disciplinary decisions "have consistently held that when a police officer uses an otherwise impolite word during a stressful street encounter where that officer is attempting to maintain control of the situation, the police officer's verbal slip does not rise to the level of actionable misconduct." NYPD Disciplinary Case No. 2018-18951 (**Board Review 19**).

§ 87(2)(g)

§ 87(2)(g)
[Redacted]
[Redacted]
[Redacted]

§ 87(4-b) § 87(2)(g)
[Redacted]
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Civilian and Officer CCRB Histories

- § 87(2)(b) has been a party to one subsequent CCRB complaints and has been named as a victim in eight allegations (**Board Review 16**).
 - § 87(2)(b) [Redacted]
[Redacted]
- This is the first CCRB case to which § 87(2)(b) has been a party (**Board Review 22**).
- PO Difo has been a member of service for six years and was named as a subject of five allegations in one additional case, which remains open. § 87(2)(g) [Redacted]
[Redacted]
- PO Corchado has been a member of service for six years and was named as a subject of five allegations in three additional cases, none of which were substantiated. § 87(2)(g) [Redacted]
[Redacted]
- PO Cannon has been a member of service for four years and this is the first CCRB complaint in which she was named a subject.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- A request for Notice of Claim was sent to the NYC Comptroller's Office on June 4, 2020. The request is still pending; the response will be added to the case file upon receipt (**Board Review 17**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [Redacted]
[Redacted]
[Redacted]
[Redacted]

Squad 13

Investigator: Robert Bryan Inv. Bryan 6/25/2021
Signature Print Title & Name Date

Squad Leader: Laura Kastner
Signature

IM Laura Kastner
Print Title & Name

06/25/2021
Date